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Towards a New International Order by Mohammed Bedjaoui

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BOOK REVIEWS

M.W. JANIS*

TOWARDS A NEW INTERNATIONAL ORDER. BY MOHAMMED BEDJAOUI.
New York: Holmes & Meier, 1979, 287 pp., cloth.

Mohammed Bedjaoui is a prominent Algerian diplomat and international lawyer who has served as the Algerian ambassador to France and as a member of the International Law Commission. Recently, Bedjaoui represented the developing countries in North-South negotiations with the United States and other Western countries.¹ On March 19, 1982 he was elected by the United Nations General Assembly and Security Council as a Member of the International Court of Justice.² Bedjaoui's new book, *Towards a New International Economic Order*,³ is the first in a Unesco series devoted to "New Challenges to International Law," and is the clearest available presentation of Third World claims for a more "equitable" international legal order. Although there is much in the book that a Western international lawyer might find uncongenial and even abrasive, the work deserves a reading by anyone who is interested in understanding Third World perceptions of international law.

Economic, political and moral considerations are the basis of Third World demands for a more equitable system of international law. Such demands are perhaps best known as they appear in two 1974 United Nations General Assembly resolutions. The "Declaration on the Establishment of a New International

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1. Some of Bedjaoui's other works include M. BEDJAOUI, *FONCTION PUBLIQUE INTERNATIONALE ET INFLUENCES NATIONALES* (1958); M. BEDJAOUI, *LA RÉVOLUTION ALGÉRIENNE ET LE DROIT* (1961); Bedjaoui, *Pour un nouveau droit social international*, 39 *ANNUAIRE DE L'ASSOCIATION DES AUDITEURS ET ANCIENS AUDITEURS DE L'ACADEMIE DE DROIT INTERNATIONAL DE LA HAYE* 17 (1969); Ninth Report on Succession of States in respect of Matters Other than Treaties (M. Bedjaoui, Special Rapporteur), [1977] 2 *Y.B. INT'L L. COMM'N* 45, U.N. Doc. A/CN.4/301/1977/Add.1. For a recent newspaper report on Bedjaoui's role in the North-South debate, see *Rich-Poor Parley: A U.N. Plan Nears: Third World Proposal for Talks on Shifting of Wealth Runs Into Opposition by U.S.*, N.Y. Times, Dec. 6, 1981, at 4, col. 1.

2. International Court of Justice Communiqué, No. 82/8 (Apr. 29, 1982).

3. See M. BEDJAOUI, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979) [hereinafter cited as BEDJAOUI].

Economic Order" proclaims a "united determination to work urgently for" an order:

based on equity, sovereign equality, interdependence, common interest and co-operation among all States, irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations.⁴

The "Charter of Economic Rights and Duties of States" makes a similar statement and provides that States must be "mindful of the need to establish and maintain a just and equitable economic and social order." The Charter describes "mutual and equitable benefit" as a principle that should govern "economic as well as political and other relations among States," and urges States to "co-operate in facilitating more rational and equitable international economic relations."⁵

The international law question raised by such provisions is whether international law can or should play a part in the establishment of an equitable international economic order. More specifically, the question is whether such provisions, based on notions of equity, should have any legal character, or whether they should instead remain merely economic, political or moral aspirations. Bedjaoui's book is most helpful in understanding Third World perceptions of this question.

Bedjaoui rejects the present system of international economic relations. His analysis first establishes the uncontroversial point that there are great disparities of wealth in the world. Second, and more controversially, he argues that it is Western exploitation that leads to the poverty of the Third World.⁶ Bedjaoui claims that the "Third World pays for the rest and leisure of the inhabitants of the developed world,"⁷ and that "Europe created, and the United States has appreciably aggravated, most of the problems which face the Third World."⁸ It is from these economic considerations that Bedjaoui advances his central argument for rejecting the traditional system of international law: "International law

4. G.A. Res. 3201 (S-VI), 6 (Special) U.N. GAOR Supp. (No. 1) at 3, U.N. Doc. A/9559 (1974), *reprinted in* 13 I.L.M. 715, 715-16 (1974).

5. G.A. Res. 3281 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974), *reprinted in* 14 I.L.M. 251, 252-56 (1975).

6. BEDJAOU, *supra* note 3, at 26-49. Of course, such a view differs considerably from that held by many Western observers. Even an early and sympathetic Western on-looker, Barbara Ward, found the sources of the West's prosperity in attributes of the peoples of the North Atlantic area and the reasons for the Third World's underdevelopment in problems within the Third World itself. B. WARD, *THE RICH NATIONS AND THE POOR NATIONS* 13-61 (1962). For a more recent Western perception suggesting that the West may not be responsible for the underdevelopment of the Third World, see Little, *Economic Relations With the Third World — Old Myths and New Prospects*, 22 SCOTT J. OF POL. ECON. 223 (1975).

7. BEDJAOU, *supra* note 3, at 36.

has faithfully interpreted this [international economic] order, and has thus consolidated its foundations. Disguised as indifference or neutrality, it is in effect a permissive law intended for a liberal or neo-liberal world economy based on certain peoples' freedom to exploit others."⁹

Despite occasional heavy broadsides,¹⁰ Bedjaoui concludes that the problem with traditional international law is not so much that it is actively unfair, but that it has not done enough to close the economic gap between North and South: "Under cover of neutrality and the refusal of any political affiliation, [international law] has permitted colonization, the exploitation of man by man, and racial discrimination. Through formal, abstract regulations, it has facilitated and legalized the enrichment of the affluent countries through its impoverishment of the poor countries."¹¹ Bedjaoui's solution is to transform through the efforts of the developing countries:

But this law, which has done nothing to help the poor countries, may nevertheless be improved thanks to them. This is the task which the developing countries have undertaken, being resolved to free international law from its paralysing formalism and its heavy armour of hypocrisy, and to steer it towards a nobler, more humane and more essential goal — the promise of development.¹²

Instead of a system of law skewed in favor of developed nations, Bedjaoui seeks a more activist international law, "[t]he responsibility of [which] is . . . to promote the progress of the international community,"¹³ and where "development will be balanced and harmonious and all countries and nations find fulfilment."¹⁴

It is at this point in his analysis that Bedjaoui makes his argument on behalf of an "equitable" international order. He claims that international law can foster a "balanced and harmonious" development only by emphasizing the "principle of equity." He states:

This international law of participation, genuinely all-embracing and founded on solidarity and co-operation, must give great prominence to the principle of equity (which corrects inequalities) rather than to the principle of equality. In doing so, it must keep the objective in view, which consists of reducing and, if possible, even of eradicating the gap that exists between a minority of rich nations and a majority

8. *Id.* at 119.

9. *Id.* at 48-49.

10. International law is a "law of appropriation." *Id.* at 11. "International law made use of a series of justifications and excuses to create legitimacy for the subjugation and pillaging of the Third World." *Id.* at 49.

11. *Id.* at 63.

12. *Id.*

13. *Id.* at 113.

14. *Id.* at 110.

of poor nations. There is no doubt at all that it is a far-reaching legal revolution to have given international law this task of fostering a policy of development and to have made this 'an international legal duty' for the rich states and a 'subjective international right' for the developing countries.¹⁵

Bedjaoui's formulation is a clear enunciation of what the Third World means by the "principle of equity" in international law and its role in the development of a New International Economic Order. It is an Order which in most circumstances will require a redistribution of wealth.

Bedjaoui assumes that the introduction of such equitable notions into international law as a means of bridging the economic gap between North and South would be revolutionary. He is persuaded that traditional international law will not be helpful in bridging that gap. In his assessment of traditional sources of international law, Bedjaoui first rules out custom as a possible solution to Third World problems: "Backward looking, conservative because static, iniquitous in its content, ponderous in its formation, custom as traditionally conceived cannot be of real use in the development of new rules, and could actually be an obstacle to any attempt at change."¹⁶ Bedjaoui is also hesitant in viewing treaties as a solution because although they have been and will continue to be useful for the Third World, they can "be particularly unwieldy and time-consuming."¹⁷ Further, he gives short shrift to general principles of law.¹⁸ Remarkably, Bedjaoui claims "international law has never drunk from the spring of natural law."¹⁹

Having rejected traditional sources of international law,²⁰ Bedjaoui concludes that "all that is left is the resolution or, in more general terms, the legal standard elaborated in international organizations, in order to attain the sought-after goal."²¹ The latter part of his book is devoted to an elaboration of this alternative. Bedjaoui: (1) argues that majority rule in votes of international organizations should be the principal source for international legal norms;²² (2) repudiates all Western attempts to limit the majority rule of the Third World;²³ (3) attacks the non-enforcement of resolutions;²⁴ and (4) calls for institutional re-

15. *Id.* at 127.

16. *Id.* at 137.

17. *Id.* at 138.

18. *Id.* at 129.

19. *Id.* at 105.

20. Bedjaoui's distress with the traditional sources of international law is shared by other Third World observers. Okolie, a Nigerian, concludes a survey of traditional sources of international law: "[l]egal arguments have always been used to explain the domestic as well as international abuse of the Third World people, and they will continue to be used in that manner." C. C. OKOLIE, *INTERNATIONAL LAW PERSPECTIVES OF THE DEVELOPING COUNTRIES: THE RELATIONSHIP OF LAW AND ECONOMIC DEVELOPMENT TO BASIC HUMAN RIGHTS* 64 (1978).

21. BEDJAOUI, *supra* note 3, at 129.

22. *Id.* at 140-44.

23. *Id.* at 157-74.

24. *Id.* at 174-77.

forms to better attune international organizations with the numerical superiority of the developing countries.²⁵

As uncongenial as some of these proposals may be to most Western international lawyers, I heartily recommend the reading of Bedjaoui's book. It clearly and forcefully presents a Third World perspective on international law which is very different from the common Western perspective. An important aspect of the art of international lawyering in the decades ahead will be the effective communication among lawyers of very different backgrounds and understandings. If international lawyers are to fashion a truly "international" law, perceptions and claims such as those advanced by Bedjaoui will need to be integrated into a system of law in which not only Western but also Southern lawyers feel comfortable. There is, of course, no assurance that this can be done. The gaps between lawyers in developing nations and those in industrialized nations may be too great. As a result, international law may increasingly fragment into differing systems; parts of each system may be compatible with other systems, but large parts of "international" law may nevertheless become particular to special regions or philosophies.

It is with respect to bridging the gaps between North and South that I must, with all respect, differ most with Bedjaoui. Although it is perhaps intentionally so, the book is overly confrontational. An effort devoted more toward discovering common ground between North and South would have been more helpful. Bedjaoui's failure to consider such common ground is illustrated by his reluctance to consider the inherent flexibility in the existing system of international law as a potential method of achieving equity. As previously noted, Bedjaoui claims that "international law has never drunk from the spring of natural law."²⁶ This cannot be true. However far international law has sometimes strayed from natural law, the discipline certainly drank first from that spring.²⁷ Indeed, a succession of positivists have complained that international law consists of too much natural law and of too little positive law.²⁸ A significant body of traditional legal theory and practice is devoted to the relation between international law and equity. It is to this body of law which Bedjaoui might have turned.²⁹

25. *Id.* at 157-58, 193-220.

26. *Id.* at 105.

27. See the illuminating discussion in J.H.W. VERZIJL, 1 INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE 3-8 (1968). One might note the very title of the seminal text: H. GROTIUS, THE RIGHTS OF WAR AND PEACE, INCLUDING THE LAW OF NATURE AND OF NATIONS (A. Campbell trans. reprint ed. 1901).

28. E.g., J. AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 140, 201 (1st ed. 1954).

29. E.g., G. BERLIA, ESSAI SUR LA PORTÉE DE LA CLAUSE DE JUGEMENT EN ÉQUITÉ EN DROIT DES GENS (1937); Mouskheli, *L'équité en droit international moderne*, 40 REVUE GÉNÉRALE DE DROIT INT'L PUBLIC 347 (1933); Strupp, *Le droit du juge international de statuer selon l'équité*, 33 HAGUE ACADEMY, RECUEIL DES COURS 351 (1930); Jenks, *Equity as a Part of the Law Applied by the Permanent Court of International Justice*, 53 L.Q. REV. 519 (1937); Hohenwart, *Der Materiellrechtliche Begriff der Billigkeit im Völkerrecht*, 1937 JAHRBUCH DER KONSULARAKADEMIE ZU WIEN 43; Cheng, *Justice and Equity in International Law*, 8

Just as Western international lawyers should treat Bedjaoui's analysis with respect, so should international lawyers from developing countries appreciate that Western international law is not devoid of many viewpoints and understandings. All lawyers, whether from developed or developing countries, should search for common areas of legal theory and interest. An important part of defining the relationship between international law and the international economic order is finding ways in which the law can help establish workable compromises between North and South. As part of that search, I encourage others to read this important new expression of Third World opinion. The task of reconciling such opinion with Western opinion remains.

CURRENT LEGAL PROB. 185 (1955); V.D. DEGAN, *L'EQUITÉ ET LE DROIT INTERNATIONAL* (1970); C. DE VISSCHER, *DE L'EQUITÉ DANS LE RÉGLEMENT ARBITRAL OU JUDICIAIRE DES LITIGES DE DROIT INTERNATIONAL PUBLIC* (1972); Lauterpacht, *Equity, Evasion, Equivocation and Evolution in International Law*, 1977-1978 PROCEEDING AM. BRANCH OF THE INT'L L. ASS'N 33; and Reuter, *Quelques réflexions sur l'équité en droit international*, 15 REVUE BELGE DE DROIT INT'L 165 (1980).